

WRITER'S DIRECT DIAL NUMBER

September 13, 1990

VIA TELECOPY

Mr. Jeff Dahnke
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

RECEIVED
FEB 28 9 32 AM '91
PREMERGER
NOTIFICATION
OFFICE

Dear Mr. Dahnke:

Pursuant to your request, I am writing to outline a fact scenario for your review and advice as to whether a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). The proposed transaction involves two sequential steps — the formation of a Partnership and the formation (or ownership by way of the partners' capital contribution) by the Partnership of two wholly-owned subsidiaries. In addition, the Partnership Agreement provides for a division of assets upon dissolution and upon redemption of a partner's interest.

The partnership is being formed pursuant to a court order upon settlement of certain litigation between affiliates of the partners of the Partnership. The formation of the Partnership and the division of assets upon dissolution or redemption of a partner's interest is subject to the approval of the Federal Communications Commission.

The specific facts are as follows:

Corporation A and Corporation B each intend to contribute various stock and partnership interests and assets to form a partnership in which Corporation A will have a 51% interest and Corporation B will have a 49% interest. As a result of certain stock interests contributed by Corporation A, the Partnership will have one wholly-owned subsidiary ("Sub. I") upon formation of the Partnership. The Partnership will also form a second wholly-owned subsidiary ("Sub. W"). The remaining properties received from Corporation A and the remaining properties received from Corporation B will be contributed to Sub. W. (Corporation B will also contribute cash to Sub. I.)

Mr. Jeff Dahnke
September 13, 1990
Page 2

The Partnership will own 100% of the voting securities of the two subsidiaries. The Partnership Agreement will provide that 90% or more of the profits and losses with respect to Sub. I will be allocated to Corporation B, and 90% or more of the profits and losses of Sub. W will be allocated to Corporation A. Upon dissolution of the Partnership, the allocation provisions are substantively similar to the foregoing provisions, subject in certain circumstances to a buy-out of the partner having a minority interest in the profits and losses of the relevant subsidiary. The Partnership Agreement will further provide that a partner's interest may be redeemed under certain circumstances. In redemption of Corporation A's interest in the Partnership, Corporation A will receive the stock of Sub. W. In redemption of Corporation B's interest in the Partnership, Corporation B will receive the stock of Sub. I. In addition, under the terms of the Partnership Agreement, Corporation A will direct the Partnership's vote of the stock of (and will control a majority of the Board seats of) Sub. W. Corporation B will be able to direct the Partnership's vote of the stock of (and will control a majority of the Board seats of) Sub. I.

For purposes of your analysis, assume that Corporation A and Corporation B satisfy the "size of person" test and that the value of the properties contributed by Corporation A as a whole and the value of the properties contributed by Corporation B as a whole each exceed \$15 million. Reviewing each step of the proposed transaction, it would appear that the transaction is not reportable. The formation of a partnership is not reportable because 16 C.F.R. §801.40 is limited to incorporated joint ventures. Similarly, the Commission has stated in earlier pronouncements that partnership interests are not considered voting securities or assets. Further, the formation of a wholly-owned subsidiary is exempt under 16 C.F.R. §802.30. Thus, it would appear no filing is required for either step.

For the reasons set forth herein, we do not believe that the provisions of the Act apply to this transaction. We would appreciate it if you would confirm this at your earliest convenience. You may contact [REDACTED] if you have any questions or comments.

Very truly yours,
[REDACTED]